



1637

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Shipman

Application No.: 09/786,105

Filed: 26 February 2001

Title: Method and kit for the characterization
of antibiotic-resistance mutations in
mycobacterium tuberculosis

Attorney Docket No.: VGEN.P-055

Group Art Unit: 1637

Examiner: S. Chunduru

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Assistant Commissioner for Patents
Washington, D.C. 20231RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In response to the Restriction Requirement mailed June 27, 2002, Applicants hereby elect the invention of claim 14, and species "a" (Seq. ID Nos 1-4) with traverse.

As a first matter, Applicants point out that no lack of unity objection was made in the PCT application on which this application is based. Furthermore, the International Preliminary Examiner report found all claims to be novel and to provide an inventive step over the art.

Notwithstanding the fact that no lack of unity objection was raised during International proceedings, the Examiner has asserted that there is a lack of unity based on the Kapur reference which the Examiner alleges without explanation anticipates the claims. Applicants respectfully point out (1) that this reference does not anticipate the claims as amended during the

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Marina T. Larson, PTO Reg. No. 32,038July 9, 2002
Date of Signature

International Phase, and (2) that these are the claims that the Examiner should be considering. Furthermore, Applicants point out that the claims do possess a common inventive concept, namely in the sequences. Claim 14 recites a kit which includes one or more primer sets for performing the method of claim 1. These same primer are recited in various combinations in claims 4-13 and 15-21. Included among these claims is a claim in which all of the primer combinations are recited, and a claim in which at a minimum level only the single combinations are recited. Thus, there is significant overlap of the claims of the application, and they do indeed relate to unified subject matter. Thus, Applicants submit that all claims of the application should be withdrawn.

With respect to the election of species, Applicants point out that claims 1-4, and 14-21 all read on this species, because they expressly require the presence of the identified primer set. Furthermore, because the primer sets which the Examiner has identified as different species are not alternatives but rather primer sets that are suitably used in combinations for amplification of multiple targets, the remaining claims in no way exclude the inclusion of the provisionally elected primer set. Thus, while the Examiner may certainly start with the designated primer set for convenience of examination it is believed that a species election is in fact inappropriate in the present instance because the different species are not alternatives but rather are components which can be employed in various combinations.

Respectfully Submitted,


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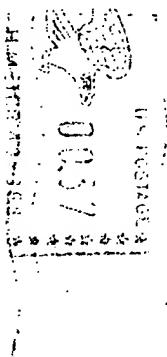
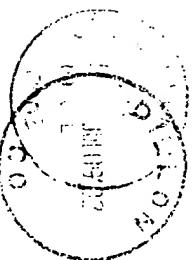
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